

Senate Bill No. 458

CHAPTER 797

An act to add Section 186.34 to the Penal Code, relating to gangs.

[Approved by Governor October 13, 2013. Filed with
Secretary of State October 13, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 458, Wright. Gangs: statewide database.

Existing law, the California Street Terrorism Enforcement and Prevention Act, makes it unlawful to engage in criminal gang activity, including actively participating in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and willfully promoting, furthering, or assisting in any felonious criminal conduct by members of the gang.

This bill would require, prior to a local law enforcement agency designating, or submitting a document to the Attorney General's office for the purpose of designating, a person as a gang member, associate, or affiliate in a shared gang database, as defined, the local law enforcement agency to provide written notice to the person and his or her parent or guardian of the designation and the basis for the designation if the person is under 18 years of age, except as specified. The bill would authorize the person or his or her parent or guardian to submit written documentation contesting the designation and would require the local law enforcement agency to provide written verification of its decision within 60 days.

The people of the State of California do enact as follows:

SECTION 1. Section 186.34 is added to the Penal Code, to read:

186.34. (a) (1) For purposes of this section, "shared gang database" shall mean any database that satisfies all of the following:

(A) Allows access for any local law enforcement agency.

(B) Contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate.

(C) Is subject to Part 23 of Title 28 of the Code of Federal Regulations. If federal funding is no longer available to a database through the federal Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Sec. 3711 et seq.), a database shall not have to satisfy this subparagraph to meet the definition of a "shared gang database."

(2) A “shared gang database” does not include dispatch operator reports, information used for the administration of jail or custodial facilities, criminal investigative reports, probation reports, or information required to be collected pursuant to Section 186.30.

(b) To the extent a local law enforcement agency elects to utilize a shared gang database, as defined in subdivision (a), prior to a local law enforcement agency designating a person as a suspected gang member, associate, or affiliate in a shared gang database, or submitting a document to the Attorney General’s office for the purpose of designating a person in a shared gang database, or otherwise identifying the person in a shared gang database, the local law enforcement agency shall, if the person is under 18 years of age, provide written notice to the person and his or her parent or guardian of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of the minor.

(c) Subsequent to the notice described in subdivision (b), the person to be designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, may submit written documentation to the local law enforcement agency contesting the designation. The local law enforcement agency shall review the documentation, and if the agency determines that the person is not a suspected gang member, associate, or affiliate, the agency shall remove the person from the shared gang database. The local law enforcement agency shall provide the person and his or her parent or guardian with written verification of the agency’s decision within 60 days of submission of the written documentation contesting the designation.

(d) The person to be designated as a suspected gang member, associate, or affiliate, or his or her parent or guardian, shall be able to request information as to whether the person has been designated as a suspected gang member, associate, or affiliate, and the local law enforcement agency shall provide that information, unless doing so would compromise an active criminal investigation or compromise the health or safety of the minor.

(e) The local law enforcement agency shall not disclose the location of the person to be designated as a suspected gang member, associate, or affiliate to his or her parent or guardian if the agency determines there is credible evidence that the information would endanger the health or safety of the minor.

(f) A shared gang database, as defined in this section, shall retain records related to the gang activity of the individuals in the database consistent with the provisions contained in Section 23.20(h) of Title 28 of the Code of Federal Regulations.

(g) Nothing in this section shall require a local law enforcement agency to disclose any information protected under Section 1040 or 1041 of the Evidence Code or Section 6254 of the Government Code.